

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2000-123  
and 2001-451

September \_\_, 2003

CENTRAL MAINE POWER COMPANY  
Petition to Establish Power Purchase Agreement  
Rate for Sales of Energy and Capacity by Warren's  
Somerset Mill to Central Maine Power Company

STIPULATION

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1. On or about June 28, 2002, the undersigned parties entered into a Stipulation (the 2002 Stipulation) in order to settle all remaining issues bearing on the above-captioned proceedings, and in particular to settle the establishment of the so-called "Rate B" for sales of energy and capacity from S.D. Warren Company's ("Warren's") Somerset Mill to Central Maine Power Company ("CMP") pursuant to a Power Purchase Agreement (the "PPA") for the period beginning March 1, 2000 through to the expiration of the PPA on October 31, 2012. The Commission approved the 2002 Stipulation by Order dated June 28, 2002.
  2. Amended 6(1)(A) of the 1997 Restructuring Act governs establishment of the Somerset PPA rate for the first year after restructuring takes effect in Maine ("Year One" - March 1, 2000 through February 28, 2001). It provides that:

For years in which the utility has sold the output of the qualifying facility contract pursuant to the Maine Revised Statutes, Title 35-A, section 3204, subsection 4, and the qualifying facility has, as of the effective date of this paragraph, contracted for retail power supply, the commission shall establish or adjust the contract rate based on the annual change, determined on a monthly basis, in the average of the total price paid for electric services by all retail customers in the utility's service territory taking service at the same voltage level as the qualifying facility. For purposes of this paragraph, the term "annual charge determined on a monthly basis" means the charge calculated by comparing the applicable figure for the month for which a contract rate is to be established with the applicable figure for the same month in the prior year.

**3.** At the time the parties entered into the 2002 Stipulation, the Commission had not established the amount due Warren for Year One in accordance with Section 6(1)(A) of the Restructuring Act. Through that time, CMP had paid Warren for Year One an interim rate based upon a “wash” (the sum of the average per kWh cost of T&D service to the Somerset Mill plus the generation supply rate of 4.625 cents/kWh). Under the interim agreement between Warren and CMP, once the final Year One rate was established by the Commission, CMP would pay Warren the additional amounts determined by the Commission, plus interest at the prime rate from the date each monthly payment under the PPA was due. At the time the parties entered into the 2002 Stipulation, they estimated that the additional amount payable from CMP to Warren for Year One with interest was approximately \$2 million (the “Year One Premium”).

**4.** As part of the 2002 Stipulation, the parties agreed to a methodology to establish Rate B for all remaining years of the PPA, including Year One. The Stipulation was premised upon the Commission approving contracts among CMP, Warren and a supplier whereby the supplier would sell to Warren the Somerset Mill's net energy requirements during the hours that the Mill imports power and purchase from CMP the Mill's net generation during the hours that the Mill imports power for the period through October 31, 2012. The agreed methodology for establishing Rate B provided that for Year One, Warren would be paid a “wash rate” and would forego the Year One Premium.

**5.** Section 13(f) of the 2002 Stipulation provides that, in the event that the Electricity Supply Contract, the Entitlement Sales Agreement or the Netting Agreement described in paragraphs 13(c) and 13 (d) of the 2002 Stipulation are terminated:

the parties to this Stipulation agree that the terms of this Stipulation shall govern the calculation of Rate B through the date of termination of the above contracts, but shall thereafter have no further force and effect. In that event, the parties to this Stipulation shall make a good faith and diligent effort to put in place a new, mutually agreeable stipulation and successor agreements for the remaining term of the Somerset PPA. In the event the parties are unable to reach agreement, the PPA rate for Year One and the remaining term of the Somerset PPA shall be determined pursuant to applicable law, provided that any additional sums due Warren for Year One in excess of the “wash” rate described in Paragraph 4 of this Stipulation shall be reduced by the number of years this Stipulation was in effect as a fraction of its intended 9-year term.

6. In the event that, at some time prior to the expiration of the Somerset PPA, the provisions of Section 13(f) of the 2002 Stipulation come into effect due to a termination of the Electricity Supply Contract, the Entitlement Sales Agreement or the Netting Agreement among Warren, CMP and the supplier, the Commission may be required to reestablish Rate B under the Somerset PPA. This determination would require that the amount of the “Year One Premium” be known. For this reason, the parties have agreed to the terms of this Stipulation establishing what Rate B for Year One and the Year One Premium would be, if the 2002 Stipulation were no longer in effect.

7. The parties to this Stipulation hereby stipulate and agree that Rate B for Year One, as calculated pursuant to Amended Section 6(1)(A) of the 1997 Restructuring Act, is as set forth in Exhibit A attached to this Stipulation. Exhibit A lists two alternative rates for each month of Year One. The difference between the two rates is based on whether the total electricity costs of certain generation facilities owned by FPL Energy Maine (and acquired from CMP) are included in the Year One calculation. Warren and CMP disagree as to whether it is appropriate for the Commission to include the FPL Energy Maine facilities’ costs in this calculation. The inclusion or exclusion of the FPL Energy Maine units results in a difference in the calculation of the Year One Premium of \$178,660. The parties have agreed, in lieu of further litigation, to resolve this difference

by “splitting the difference” between the Year One Premium calculated to include the FPL Energy Maine units (\$1,603,576) and the Year One Premium calculated to exclude the FPL Energy Maine units (\$1,782,236). Based upon this agreement, the parties further stipulate and agree that the principal amount of the Year One Premium is \$1,692,906, with interest accrued through June 28, 2002 in the amount of \$197,239, for a total amount as of June 28, 2002 of \$1,890,145. The parties further stipulate and agree that, in the event that the provisions of Section 13(f) of the 2002 Stipulation come into effect due to a termination of the Electricity Supply Contract, the Entitlement Sales Agreement or the Netting Agreement among Warren, CMP and the supplier, and the parties to the 2002 Stipulation are unable to put into place a mutually-acceptable replacement stipulation and successor agreements, then (a) Warren shall be entitled to be paid the Year One Premium, plus interest in the amount set forth above, reduced by the number of years the 2002 Stipulation was in effect as a fraction of its intended 9-year term, and (b) the Commission shall establish Rate B for the remaining term of the Somerset PPA in accordance with applicable law.

**8. Legal Effect of this Stipulation.** The execution of this Stipulation by any party shall not constitute precedent as to any matter of law or fact nor, except as expressly proved herein, shall it foreclose any of the parties from making any contention or exercising any right, including rights of appeal, in any other Commission proceeding or investigation, or any other trial or action.

The parties intend that the Commission consider this Stipulation for adoption as an integrated solution to the issues addressed herein which arose in the above-captioned proceeding and as otherwise presented in this Stipulation. The parties also intend that this Stipulation shall be null and void, and not bind the parties in the above-captioned

proceeding in the event the Commission does not adopt this Stipulation without material modification.

**9.** If not accepted by the Commission in accordance with the provisions hereof, this Stipulation shall not prejudice the positions taken by any party on these issues before the Commission in this proceeding and shall not be admissible evidence therein or in any other proceeding before the Commission.

Respectfully submitted this \_\_\_th day of September 2003.

OFFICE OF THE PUBLIC ADVOCATE

By:\_\_\_\_\_

CENTRAL MAINE POWER COMPANY

By:\_\_\_\_\_

S.D. WARREN COMPANY

By:\_\_\_\_\_

INDUSTRIAL ENERGY CONSUMER GROUP

By:\_\_\_\_\_